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January 18, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 24, 2006

Case Number: TSO-0369

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for continued access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should be restored.

I. FACTUAL BACKGROUND

The Individual has worked for a DOE contractor and held a security clearance for over twenty years. In 1982, the Individual was cited for Driving under the Influence of alcohol (DUI). In 1989, he was cited for DUI, with an alcohol level of 0.21. In each case, the Individual disclosed the circumstances to the security office and retained his clearance.

In 1998, the Individual and his wife sought marital counseling. The counselor recommended that the Individual attend Alcoholics Anonymous (AA). In December 1998, the Individual began to do so.

In 1999, during a routine reinvestigation related to his clearance, the Individual reported counseling for alcohol consumption. A DOE Psychiatrist interviewed the Individual and issued a report. See DOE Ex. 17 (DOE Psychiatrist's 1999 Report). The Report stated that the Individual was alcohol dependent, in sustained full remission, and that the Individual had demonstrated adequate evidence of reformation or rehabilitation. *Id.* at 7, citing Diagnostic and Statistical Manual of the American Psychiatric

Association, 4th edition, Text Revision (DSM-IV). The Report further stated that if the Individual resumed alcohol consumption, the Individual would no longer be demonstrating adequate evidence of reformation or rehabilitation.

In 2005, during a subsequent reinvestigation, the Individual reported alcohol consumption. The security office again referred the Individual to the DOE Psychiatrist. In October 2005, the DOE Psychiatrist interviewed the Individual and issued a report. See DOE, Ex. 16 (the DOE Psychiatrist's 2005 Report). The Report concluded that the Individual's resumption of alcohol consumption meant that the Individual was no longer demonstrating adequate evidence of reformation and rehabilitation. The DOE Psychiatrist defined what would constitute reformation: five years of abstinence without any rehabilitation program, or two to three years of abstinence with a rehabilitation program. The DOE Psychiatrist defined what would constitute rehabilitation: two years of AA or three years of counseling.

In 2006, the DOE issued a Notification Letter, citing 10 C.F.R. § 710.8(j) (Criterion J, alcohol) and 10 C.F.R. § 710.8(h) (Criterion H, mental condition). The Notification Letter cited the DUIs and marital problems related to alcohol consumption, the DOE Psychiatrist's 1999 Report, the Individual's resumption of alcohol consumption, and the DOE Psychiatrist's 2005 Report.

The Individual requested a hearing, and I was appointed to serve as the hearing officer. At the hearing, DOE Counsel presented one witness: the DOE Psychiatrist. The Individual testified and presented 10 additional witnesses: two psychiatrists, his wife, and seven friends and/or co-workers.

The Individual also submitted an affidavit from a friend and co-worker, see Individual Ex. A, and a letter from his AA sponsor, see Individual Ex. B. The Individual submitted a variety of other supporting documents, which will be cited where relevant.

II. THE HEARING

A. The Individual

The Individual testified that he abstained from alcohol consumption for over three years - from December 1998 to April 2002. Tr. at 169. The Individual testified that he went to AA, worked the twelve steps, and continued to go to church, where he met his current wife. *Id.* at 227, 235. The Individual testified that, as

he increased his involvement in church, he decreased his AA attendance. *Id.* at 227.

The Individual testified that, in 2002, he had a glass of champagne at his wedding. *Tr.* at 170. He testified that over the next three years, his alcohol consumption was not "excessive." *Id.* at 187. He testified that it was "erratic" and "hard to estimate" and he stated:

It would be three months we'd have no drinking, but if we went on vacation we may have an occasion to drink more than twice on that vacation, like we're at the beach or go to a nice dinner. But with all the activity at our house, and the children and church, we just didn't drink much, so it's erratic, so it's hard to estimate. Sometimes it would be once a month, sometimes it would be once every three to four months.

Id. at 170. When asked to describe the amount that he drank, the Individual described it as "usually" one or two drinks and that a lot of times that was at "dinner or a social event." *Id.* He testified that the most he had consumed at one time was about four drinks on occasions such as group picnics and camping where the consumption was spread over five or six hours. *Tr.* at 171. When the Individual's attorney asked whether, during the period from 2002 to 2005, he ever became intoxicated or had a "buzz," the Individual answered "No." *Id.* at 171.

The Individual testified that his spare time is devoted to a myriad of family and church-related events. He referred to a list of his activities, which included coaching his children's teams, scouts, and church-related activities. *Tr.* at 172, *citing* Individual Ex. D.

The Individual testified that he has not had a drink since about two weeks before he saw the DOE Psychiatrist in October 2005. *Tr.* at 237. When asked whether he intended to consume alcohol in the future, the Individual stated: "No, I would not. ... Because my clearance and my job are much more important than a drink." *Id.* at 188. *See also id.* at 188-191.

B. Individual's Wife

The Individual's wife testified that she met the Individual in church in 1998 and began to date him in 2000. She testified that they married in 2002 and that they have a blended family with three

children. She testified that she worked at the same DOE site as the Individual for 10 years but decided to stay home to provide extra stability for the children. Tr. at 91. She described their home life:

We're really busy with kids and family and soccer teams and church activities, and our life pretty much centers around those types of things. There is really just not that much time for drinking and doing any real social things. We're pretty focused on our kids.

Id. at 92.

She stated that, from the time that she met the Individual until 2002, the Individual did not drink. She stated that then, for a few years, the Individual drank "very, very slightly, very irregularly." Tr. at 92. She testified that she has never seen the Individual impaired. Tr. at 92-93. She indicated that, since October 2005, the Individual has not consumed any alcohol and has attended AA weekly. *Id.*

C. Friends and/or Co-workers

Seven friends and/or co-workers testified. Witness 1, a friend and co-worker, has known the Individual for 20 years. Tr. at 119. He described the Individual as abstinent from 1999 to 2002 and having an occasional beer until October 2005 when he resumed abstinence. *Id.* at 123, 130, 140-41. Witness 2, a friend and co-worker, has known the Individual for about five years and his wife for over ten years. *Id.* at 110. She stated that the Individual and his wife have been "a tremendous amount of support" for her and her injured child. *Id.* at 111. Witness 2 stated that the Individual and his wife come to her house a couple of times a year for dinner. She stated that she has never seen the Individual have more than a beer at a time. *Id.* The remaining five witnesses were co-workers, some of whom see the Individual at work-related social events. They testified that they saw no signs of an alcohol problem and that family is a very large part of the Individual's life. *Id.* at 56, 114, 116-17, 145-46, 150, 154-55. They testified that the Individual was a very good employee. See, e.g., *id.* at 146 ("conscientious"), 150 (performance is "absolutely first rate").

D. The Individual's Psychiatrists

The Individual presented two psychiatrists (the Individual's Psychiatrists). The Psychiatrists had extensive experience in the

study and treatment of alcoholism. Tr. at 193-97 (Psychiatrist 1); 244-48 (Psychiatrist 2). See also Individual Exs. J, K. Both Psychiatrists evaluated the Individual. Tr. at 197-203 (Psychiatrist 1); *id.* at 248-51 (Psychiatrist 2).

The Psychiatrists testified that the Individual had a serious alcohol problem in 1999. Psychiatrist 1 testified that, if he had evaluated the Individual in 1999, he would have diagnosed the Individual as alcohol dependent and recommended complete abstinence. Tr. at 217. Psychiatrist 2 testified somewhat differently. He indicated that he questioned the diagnosis of alcohol dependence but agreed that "there was problematic drinking that needed intervention." *Id.* at 273.

Both Psychiatrists testified that the Individual's current risk of relapse was very low. Psychiatrist 1 defined relapse as drinking "to get high" and stated that he had "no concern about [the Individual] relapsing." Tr. at 201, 209. Psychiatrist 2 placed the rate of relapse as less than five percent. *Id.* at 283.

E. DOE Psychiatrist

The DOE Psychiatrist testified at the beginning of the hearing and, again, at the end of the hearing. The DOE Psychiatrist testified that the Individual suffers from alcohol dependence; he discussed his 1999 assessment and his updated 2005 assessment. See, e.g., Tr. at 11-30. In support of his diagnosis of dependence, the DOE Psychiatrist cited the Individual's two DUIs while holding a clearance and the Individual's description of his alcohol consumption. The DOE Psychiatrist reiterated his opinion that a two-year period of AA and abstinence was the minimum required to demonstrate reformation and rehabilitation. *Id.* at 30.

The DOE Psychiatrist testified that, at the time of the hearing, the Individual's risk of relapse was 25 percent. Tr. at 286. Citing a study, the DOE Psychiatrist stated approximately ten percent of individuals diagnosed as alcohol dependent could resume alcohol consumption for a prolonged period without risk of relapse. *Id.* at 25-26. The DOE Psychiatrist did not believe that the Individual fell within that group. The DOE Psychiatrist cited, *inter alia*, the extent of the Individual's alcohol use up to 1999 and related problems. *Id.* at 25-26.

III. APPLICABLE STANDARD

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). In that case, the individual has the burden to prove that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE considers various factors including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a).

IV. ANALYSIS

A. Whether the Individual is Alcohol Dependent

The Individual was properly diagnosed in 1999 as alcohol dependent. The DOE Psychiatrist explained the basis for his diagnosis, and Psychiatrist 1 believes it was a reasonable diagnosis. Tr. at 11-30, 217.

B. Whether the Individual Has Demonstrated Adequate Evidence of Reformation and Rehabilitation from Alcohol Dependence

The DOE regulations do not specify what constitutes adequate evidence of reformation or rehabilitation. Accordingly, I look to adjudicative guidelines. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines). Guideline G gives examples of adequate evidence of reformation or rehabilitation from an alcohol-related problem. Examples include evidence that "the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent)..." and "the individual has successfully completed inpatient or outpatient counseling or rehabilitation

along with any required aftercare, has demonstrated a clear and established pattern of ... abstinence in accordance with treatment recommendations, such as participation in meetings of [AA] or a similar organization and has received a favorable prognosis by a duly qualified medical professional..." Guideline G, ¶¶ 23(b), 23(d).

The Individual has demonstrated that since 1999, he has abstained from alcohol or consumed it in moderation. The Individual demonstrated that he was abstinent from December 1998 to April 2002 and that he attended AA and completed the twelve steps. The Individual also demonstrated that he consumed alcohol moderately from April 2002 to October 2005, and resumed abstinence and AA attendance in October 2005. The Individual testified to the foregoing, and his witnesses corroborated that testimony. See, e.g., Tr. at 28-29, 110-11, 119, 123, 130, 140-41, 227. See also Individual Ex. A (friend and his wife see Individual and wife socially, and Individual does not consume alcohol); Individual Ex. B (Individual's AA sponsor states that Individual attends AA weekly and is himself a sponsor).

The Individual has also demonstrated that he is committed to abstinence. The Individual testified that alcohol is not that important to him and is not worth jeopardizing his clearance. Tr. at 188. He provided extensive detail about his involvement in family and church activities since 2002, which indicated a full life and little time for alcohol consumption. *Id.* at 172-3. A number of witnesses corroborated his testimony. See, e.g., Tr. at 28-29 (abstinence), 111 (church); 117 (family and church). See also Individual Ex. A (family); Individual Ex. D (list of outside activities).

The Individual has received "a favorable diagnosis." As an initial matter, I recognize that the DOE Psychiatrist believes that Individual's risk of relapse is too high to be acceptable from the standpoint of national security. The DOE Psychiatrist testified knowledgably and thoughtfully on this issue. On the other hand, the Individual's Psychiatrists believe the risk of relapse is very low. They have extensive experience in the study and treatment of alcoholism, and they had the opportunity to spend more time with the Individual. Given these facts, I am inclined to give greater weight to their opinion that the risk of relapse is very low.

In sum, the Individual has been abstinent or consumed alcohol moderately for over seven years. At the time of the hearing, he had been abstinent and attending AA for eight months. He has an AA sponsor and has been asked to be one. He is committed to

abstinence, and two Psychiatrists have opined that his risk of relapse is low. Based on the foregoing, I conclude that the Individual has shown adequate evidence of reformation and rehabilitation. See also *Personnel Security Hearing (Case No. TSO-0410)*, 29 DOE ¶ 82,877 (2006) (30 percent risk of relapse); *Personnel Security Hearing (Case No. TSO-0320)*, 29 DOE ¶ 82,920 (2006) (20 percent risk of relapse).

V. CONCLUSION

The Individual has resolved the Criteria J and H concerns set forth in the Notification Letter. Therefore, restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should be restored. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at *Id.* § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: January 18, 2007